IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Axiall Corporation, and Employee Benefits Administrative Committee, as plan administrator of the Omnibus Retiree Welfare Benefit Plan Plaintiffs, v. International Chemical Workers Council of the United Food and Commercial Workers Union and its Local 45C; and Local Lodge 470, District 161, International Association of Machinists and Aerospace, AFL-CIO; and Lindsay Granger; Thomas Vice; John Dobbs; and Mel Montes, individually and as representatives of a defendant class of retirees, Defendants.	Civil Action No. _________

CLASS ACTION COMPLAINT FOR DECLARATORY JUDGMENT

INTRODUCTION

1. Plaintiffs Axiall Corporation and Employee Benefits Administrative Committee, as the plan administrator of the Omnibus Retiree Welfare Benefit Plan ("EBAC") bring this action for declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a), and the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1132(a)(3), 1132(e). Axiall Corporation has announced the modification and/or termination of retiree health benefits provided to certain retirees represented during their employment with Axiall Corporation (or its subsidiaries or predecessors) by Defendant International Chemical Workers Union Council of the United Food and Commercial Workers Union and its Local 45C (collectively, "Chemical Workers") or by Defendant Local Lodge 470 of District 161, International Association of Machinists and Aerospace Workers, AFL-CIO ("Machinists Local 470") (collectively, the "Unions") or their predecessors, as well to retirees' eligible spouses, surviving spouses, and dependents. Axiall Corporation and EBAC seek a declaration that their changes do not violate any applicable collective bargaining agreements ("CBAs") between Axiall Corporation (or its subsidiaries or predecessors) and the Unions or any applicable statutes.

THE PARTIES

2. Axiall Corporation is a Delaware corporation with its principal place of business located at 1000 Abernathy Road, NE, Suite 1200, Atlanta, Georgia 30328.

3. EBAC administers certain benefits plans for Axiall Corporation, including those plans providing retiree medical benefits to certain former employees of PPG Industries, Inc. ("PPG") and Axiall Corporation (or its subsidiaries).

4. Axiall Corporation operates plants in Lake Charles, Louisiana (the "Lake Charles Plant") and New Martinsville, West Virginia (the "Natrium Plant") that manufacture a variety of chemicals that are used in chemical manufacturing, pulp and paper production, water treatment, plastics production, and products used for home construction. The Lake Charles and Natrium Plants were previously owned and operated by PPG. On January 28, 2013, the Lake Charles and Natrium plants (and other chlor-alkali assets of PPG) were spun off from PPG and merged into Georgia Gulf Corporation. The resulting company became Axiall Corporation. Pursuant to the terms of the acquisition of the Lake Charles and Natrium Plants, Axiall Corporation (*inter alia*) assumed PPG's obligations under certain CBAs, and, thereafter, Lake Charles employees became employees of Eagle U.S. 2 LLC and Natrium employees became employees of Eagle Natrium LLC. Both Eagle U.S. 2 LLC and Eagle Natrium LLC are wholly owned subsidiaries of Axiall (collectively, with Axiall Corporation, referred to as "Axiall").

5. Defendant Chemical Workers is a labor organization representing employees in industries affecting commerce within the meaning of the LMRA, 29 U.S.C. §§ 142, 152 and 185. Frank Cyphers is the President of the International Chemical Workers and maintains his office at 1655 West Market Street, Akron, Ohio 44313. Chemical Workers Local 45C represents certain employees who work in the Natrium Plant and is a local affiliate of the International Chemical Workers. Michael Gillespie is the President of Chemical Workers Local 45C, and maintains his office at 150 West Duerr Street, New Martinsville, West Virginia 26155.

6. Defendant Machinists Local 470 is a labor organization representing employees in industries affecting commerce within the meaning of the LMRA, 29 U.S.C. §§ 142, 152 and 185. Machinists Local 470 represents certain employees who work in the Lake Charles Plant and is a local affiliate of the International Machinists. Charles Bennett is the

President of Machinists Local 470, and maintains his office at 330 Belden Street, Lake Charles, Louisiana 70601.

7. Defendant Lindsay Granger is a retired hourly employee of the Lake Charles Plant who was represented, when employed, by Machinists Local 470. Mr. Granger retired in 1992 and is now eligible for Medicare benefits. He has been furnished with health care benefits by PPG and/or Axiall, first as an active employee and currently as a retiree. He is a citizen of Louisiana.

8. Defendant Thomas Vice is a retired hourly employee of the Lake Charles Plant who was represented, when employed, by Machinists Local 470. Mr. Vice retired in 2007 and is now eligible for Medicare benefits. He has been furnished with health care benefits by PPG and/or Axiall, first as an active employee and currently as a retiree. He is a citizen of Louisiana.

9. Defendant John Dobbs is a retired hourly employee of the Natrium Plant who was represented, when employed, by the Chemical Workers. Mr. Dobbs retired in 2000 and is now eligible for Medicare benefits. He has been furnished with health care benefits by PPG and/or Axiall, first as an active employee and currently as a retiree. He is a citizen of Pennsylvania.

10. Defendant Mel Montes is a retired hourly employee of the Natrium Plant who was represented, when employed, by the Chemical Workers. Mr. Montes retired in 2007 and is now eligible for Medicare benefits. He has been furnished with health care benefits by PPG and/or Axiall, first as an active employee and currently as a retiree. He is a citizen of West Virginia.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 as a civil action arising under the laws of the United States.

12. This Court also has jurisdiction over this action pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, and Section 301 of the LMRA, 29 U.S.C. § 185(a), which provides for jurisdiction in federal court over "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . ." Axiall is an employer in an industry affecting commerce as those terms are defined in 29 U.S.C. §§ 142 and 152. The Chemical Workers and Machinists Local 470 are labor organizations representing employees in an industry affecting commerce, as those terms are defined in 29 U.S.C. §§ 142 and 152. Axiall seeks a declaration that its conduct in modifying and/or terminating certain retiree medical benefits does not violate the CBAs with the Unions that are more fully described in ¶ 23.

13. This Court also has jurisdiction over this action pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, and Sections 502(a)(3) and 502(e) of ERISA, 29 U.S.C. §§ 1132(a)(3) and 1132(e). EBAC seeks a declaration that the announced modification and/or termination of certain retiree medical benefits for former Medicare-eligible employees of the Lake Charles and Natrium Plants do not violate ERISA or EBAC's duty to enforce the terms of any applicable benefit plans for which it is the named plan administrator. Axiall seeks a declaration that its conduct in modifying and/or terminating certain retiree medical benefits does not violate ERISA.

14. The Court has jurisdiction over the Unions pursuant to 29 U.S.C. § 185(a), (c). The Court also has jurisdiction over the Unions because they have consented to be sued on

the subject matter of this action – whether retiree medical benefits under the applicable CBAs are vested for life – by virtue of their prior suits (initiated in 2001) in this Court against PPG on the same issue. Local Lodge 470 of Dist. 161 v. PPG Industries, Inc., No. 2:01-cv-02110; Intl. Chemical Workers Union Council v. PPG Industries, Inc., No. 2:01-cv-01751. Specifically, the Unions brought suit on behalf of then-current and retired union employees of the Lake Charles and Natrium Plants alleging that the terms of the applicable CBAs and plan documents pertaining to the Lake Charles and Natrium Plants provided vested retiree medical benefits. This Court concluded, in decisions dated March 31, 2006, that the benefits in question were not vested. See Exhibits 1, 2. In doing so, it relied on provisions of the CBAs that are substantially identical to language in subsequent CBAs and plan documents, including those CBAs and plan documents that were assumed and/or negotiated by Axiall with the Unions and that are at issue here. In addition, because of these prior related suits, the Unions have substantial prior minimum contacts with this Court so that subjecting them to this Court's jurisdiction does not offend traditional notions of fair play and substantial justice.

15. The Court has jurisdiction over Mr. Dobbs, Mr. Granger, Mr. Vice and Mr. Montes (collectively "Individual Defendants") under 29 U.S.C. § 1132(e), and (a) for Mr. Dobbs because he resides in Pennsylvania, (b) for Mr. Granger, Mr. Vice and Mr. Montes because they are former officials of their respective Unions, negotiated with a Pennsylvania company as Union officials, and participated in the earlier litigation brought by the Unions (referenced in ¶ 14). In addition, because of the prior related lawsuits brought in this Court (as referenced supra ¶ 14) on their behalf, and because they had purposeful, voluntary contact with Pennsylvania in the course of their employment with PPG (which previously owned the Lake Charles and Natrium Plants), the Individual Defendants have sufficient minimum contacts with

Pennsylvania so that subjecting them to this Court's jurisdiction does not offend traditional notions of fair play and substantial justice.

16. Mr. Vice and Mr. Montes were active employees represented by the defendant-Unions in the prior litigation. As such, they and other then-active employees, are bound by this Court's decision.

17. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391(b), 29 U.S.C. §§ 185(a), (c), 1132(e)(2) and because all of the Defendants are subject to personal jurisdiction in this District.

FACTUAL BACKGROUND

18. Axiall currently provides medical benefits to approximately 775 Medicare-eligible retirees and/or households (including eligible spouses, surviving spouses, and dependents of retirees) who were represented, when employed, by the Unions and who retired from the Lake Charles Plant after May 15, 1987 and before August 31, 2012 or the Natrium Plant after March 8, 1987 and before August 21, 2013 (collectively, the "Axiall Medicare Retirees"). The medical benefits of these individuals have changed and/or terminated as described below, and these changes, and Axiall's right to implement these changes under the CBAs and related benefit plans, are the subject matter of this litigation.

19. The medical benefits provided to the above defined Axiall Medicare Retirees were negotiated exclusively by the Unions.

20. On or about October 17, 2013, Axiall and EBAC sent letters to the Axiall Medicare Retirees announcing their intent to modify and/or terminate the benefits provided to the Axiall Medicare Retirees effective January 1, 2014, and describing those changes. Prior to January 1, 2014, the Axiall Medicare Retirees could elect to participate in a company-sponsored

plan or, alternatively, to receive a partial reimbursement of premium payments made to an insurer selected by the Axiall Medicare Retiree. Beginning January 1, 2014, the Axiall Medicare Retirees can no longer participate in a company-sponsored plan, but will continue to be eligible for partial reimbursement of premium payments made to an insurer selected by the Axiall Medicare Retiree.

21. These modifications to retiree health benefits allow Axiall Medicare Retirees to maintain their current level of medical coverage. In fact, many will pay the same or less for comparable coverage. Additionally, the Axiall Medicare Retirees have or will receive the assistance of a company that provides a private Medicare exchange to facilitate the purchase of retiree medical benefits in the individual Medicare market.

22. Subsequent to Axiall's announcement of its modification to the benefits provided to the Axiall Medicare Retirees, on November 1, 2013, the Machinists Local 470 submitted a grievance at the Lake Charles Plant stating that Axiall "violated our Agreement and took it upon their own to implement changes to our negotiated Benefits" and requesting that "[a]ll past and current hourly employees be provided health care coverage from [Axiall]; as previously negotiated." See Exhibit 3, November 1, 2013 grievance. Axiall has been informed that the Chemical Workers intend to file a similar grievance at the Natrium Plant. Additionally, PPG has been informed by certain Axiall retirees that they object to the changes made by Axiall. See Exhibit 4, October 31, 2013 letter. The Axiall Medicare Retirees and the Unions have historically been litigious over retiree medical benefits.

COLLECTIVE BARGAINING AGREEMENTS

23. Pursuant to the terms of the acquisition of the Lake Charles and Natrium Plants, Axiall assumed PPG's obligations under the CBA between PPG and the Machinists Local

470 effective from August 29, 2009 through August 31, 2012, as well as the CBA between PPG and the Chemical Workers effective from August 19, 2010 through August 21, 2013. Axiall and the Machinists Local 470 are parties to a subsequent CBA effective August 31, 2012 and expiring August 28, 2015, and Axiall and the Chemical Workers are parties to a CBA effective August 21, 2013 and expiring August 17, 2016 (collectively, the "Axiall CBAs").

24. There is no provision in any of the Axiall CBAs or Axiall Group Insurance Plans ("Axiall GIPs") that restricts Axiall's right to amend, modify, and/or discontinue the medical benefits provided under the CBAs or GIPs upon expiration of the applicable CBAs. The Axiall GIPs all contain the following substantially identical language expressly limiting the duration of any benefits to the term of the respective CBA:

> The Company will continue the benefits described herein for participants consistent with the terms and conditions of the Labor Agreement *for the duration of such agreement*. . . . In the event of such termination of the Labor Agreement, you have the same rights as to claim submission and review and conversion rights as you would have under individual termination of coverage.

E.g., 2009 Lake Charles GIP, at 7 (emphasis added).

25. The durational language in the Axiall GIPs is nearly identical to the language that is contained in every GIP issued by PPG, the previous employer for the Lake Charles and Natrium Plants, since 1987, and that was at issue in the prior litigation brought by the Unions against PPG in this Court.

26. Since January 28, 2013, Axiall has been providing certain medical benefits to Axiall Medicare Retirees. These medical benefits provided to the Axiall Medicare Retirees were negotiated exclusively by the Unions. The medical benefits were set forth in Axiall GIPs that were part of the CBAs operative at the time. Specifically, Axiall assumed PPG's obligations under the August 29, 2009 GIP issued by PPG pursuant to Axiall's acquisition of the Lake

Charles Plant ("2009 Lake Charles GIP") as well as the August 19, 2010 GIP ("2010 Natrium GIP") issued by PPG pursuant to Axiall's acquisition of the Natrium Plant.

27. As referenced above, see ¶ 14, in 2001, the Unions (on behalf of then active employees and retirees) filed suit against PPG in this Court asserting that the PPG CBAs and GIPs provided for the vesting of group health insurance for retirees from the Lake Charles and Natrium Plants. Local Lodge 470 of Dist. 161 v. PPG Industries, Inc., No. 2:01-cv-02110 (W.D. Pa.); Intl. Chemical Workers Union Council v. PPG Industries, Inc., No. 2:01-cv-01751 (W.D. Pa.).

28. This Court concluded that the above-cited durational language precluded a finding that retiree benefits were vested. Specifically, the Court held that the CBAs and plan documents were "not only devoid of clear and express language indicating PPG's intent to vest retiree welfare benefits, but they are without ambiguity, thereby precluding a finding that PPG intended for retiree benefits to vest." Local Lodge 470 of Dist. 161 v. PPG Industries, Inc., No. 2:01-cv-02110, 2006 WL 901927, at *16 (W.D. Pa. March 31, 2006); Intl. Chemical Workers Union Council v. PPG Industries, Inc., No. 2:01-cv-01751, 2006 WL 895087 (W.D. Pa. March 31, 2006). The Third Circuit affirmed this Court's ruling. 236 Fed. Appx. 789 (3d Cir. 2007).

CLASS ACTION ALLEGATIONS

29. Axiall and EBAC bring this action pursuant to Rules 23(b)(1) or (b)(2) of the Federal Rules of Civil Procedure.

30. In addition to the Individual Defendants, Axiall and EBAC bring this action against the following Defendant class of persons:

> all persons who (1) are or were employee-participants, eligible dependents of participants, or eligible spouses of participants in Axiall and/or PPG employee benefit plans which provided retiree medical benefits, and (2) as to whom the Unions had been the participants' collective bargaining

representative, and who worked at either the Lake Charles or Natrium Plants at the time of their retirement, and (3) who retired from the Lake Charles Plant after May 15, 1987 and before August 31, 2012 or at the Natrium Plant after March 8, 1987 and before August 21, 2013, or, in the case of dependents or spouses, who had participants who retired from the Lake Charles Plant after May 15, 1987 and before August 31, 2012 or at the Natrium Plant after March 8, 1987 and before August 21, 2013 and (4) who are affected by Axiall's modifications to or termination of retiree health benefits described supra ¶ 20.

31. The class numbers approximately 775 Medicare-eligible households. Accordingly, the numerosity of the class makes joinder impracticable.

32. Common questions of law and fact predominate this case. Specifically, the common questions include whether Axiall has the right, under the Axiall CBAs and Axiall GIPs, to modify and/or terminate the medical benefits of the Axiall Medicare Retirees, and whether EBAC has the right to enforce Axiall's modifications to these benefits.

33. The Individual Defendants' defenses are typical of those of the members of the class, in that each of these class representatives can be expected to argue that Axiall and/or EBAC do not have the right to modify medical benefits of Axiall Medicare Retirees under the Axiall CBAs and Axiall plan documents, or otherwise deny claims for such medical benefits.

34. The Individual Defendants will fairly and adequately represent the interests of the proposed class because their defenses are the same as those for the members of the class.

35. A class action is appropriate to resolve this controversy due to the risk of inconsistent verdicts were cases to proceed individually.

36. A class action is appropriate because the interests of non-party members would be impeded by a decision in their absence.

37. The modifications to and/or termination of retiree medical benefits announced by Axiall and EBAC were taken on grounds equally applicable to all members of the

Defendant class, thus making appropriate final declaratory relief with respect to the Defendant class as a whole.

38. For the foregoing reasons, a class action is superior to other available methods for a fair and efficient adjudication of this controversy.

COUNT ONE

(Declaratory Judgment Requested That Axiall's Actions Do Not Violate Section 301 of the LMRA)

39. A controversy exists between Axiall and EBAC and the Unions, the Individual Defendants, and the Defendant class regarding their respective rights and duties under the Axiall CBAs and plan documents. Axiall and EBAC have announced their intention to modify and/or terminate the Axiall Medicare Retirees' medical benefits effective January 1, 2014. The Axiall Medicare Retirees have objected to the proposed modifications. See Exs. 3, 4 and ¶ 22. Both the Unions and the Axiall Medicare Retirees have shown a propensity to litigate retiree healthcare issues under earlier CBAs and GIPs.

40. The Unions, on behalf of active and retired employees, already litigated these same issues regarding retiree medical benefits before this Court, which found that the benefits were not vested. Defendants are bound by this Court's prior decision.

41. Axiall desires a judicial determination that its announced modification and/or termination of the Axiall Medicare Retirees' medical benefits does not violate the terms of the Axiall CBAs and plan documents, and therefore is consistent with Axiall's obligations under the LMRA.

42. A judicial declaration is necessary and appropriate at this time under all the circumstances so that Axiall may determine its right to modify and/or terminate the Axiall Medicare Retirees' medical benefits.

COUNT TWO

(Declaratory Judgment Requested That Axiall and EBAC's Actions Do Not Violate ERISA)

43. A controversy exists between Axiall and EBAC and the Unions, the Individual Defendants, and the Defendant class regarding their respective rights and duties under the Axiall CBAs and plan documents. Axiall and EBAC have announced their intention to modify and/or terminate the Axiall Medicare Retirees' medical benefits effective January 1, 2014. The Axiall Medical Retirees have objected to the proposed modifications. See Exs. 3, 4 and ¶ 22. Both the Unions and the Axiall Medicare Retirees have shown a propensity to litigate retiree healthcare issues under earlier CBAs and GIPs.

44. Axiall and EBAC fully complied with their legal obligations under ERISA and the terms of the plans when they announced the modifications to the retiree medical benefit program. ERISA, 29 U.S.C. § 1104(a)(1)(B), requires that the EBAC comply with the terms of the benefit plan it administers, including the plans under which Axiall is providing medical benefits to the Individual Defendants and the Defendant class. Further, Axiall established a procedure for amending the plans, which procedure has been properly utilized and which Axiall seeks to enforce. Axiall and EBAC have notified the Defendants of the plan amendments, referenced in Paragraph 20, that modify and/or terminate the medical benefits provided to the Axiall Medicare Retirees.

45. The Unions, on behalf of active and retired employees, already litigated these same issues regarding retiree medical benefits before this Court, which found that the benefits were not vested. Defendants are bound by this Court's prior decision.

46. Axiall and EBAC desire a judicial determination that the announced modification and/or termination of the Axiall Medicare Retirees' medical benefits does not violate ERISA or the terms of the plans.

47. A judicial declaration is necessary and appropriate at this time under all the circumstances so that Axiall may determine its right to modify and/or terminate the Axiall Medicare Retirees' medical benefits and that the EBAC may enforce the terms of such modified or terminated Axiall Medicare Retirees' medical benefits.

PRAYER FOR RELIEF

1. An Order of this Court certifying a defendant class, as defined above, pursuant to Rule 23(b)(1) or (b)(2) of the Federal Rules of Civil Procedure;

2. That the Court enter a Declaratory Judgment, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq*., LMRA, 29 U.S.C. § 185(a), and ERISA, 29 U.S.C. §§ 1132(a)(3), 1132(e) that Axiall has the right to modify and/or terminate the medical benefits of Axiall Medicare Retirees and that EBAC has the right to enforce such modified or terminated medical benefits of Axiall Medicare Retirees; and

3. For such other and further relief as this Court deems proper.

Respectfully submitted,

s/ Amy E. Dias

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